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LOCAL GOVERNMENT

# BULLETIN 41

## AMENDMENTS TO THE MUNICIPAL ELECTIONS ACT 1977

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Ontario Ministry of Intergovernmental Affairs

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Local Government Division  
Municipal Administration Branch

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To the Municipal Clerk:

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## INTRODUCTION

This bulletin will deal with the recent amendments to The Municipal Elections Act, 1977 that came into force on June 17, 1980. (For a discussion of The Municipal Elections Act, 1977 and earlier amendments to the Act, please refer to Bulletins number 1 and 3 of this series.) Most of the amendments dealt with here are the result of requests received from municipal associations and individuals.

Maximum benefit will be obtained if this bulletin is read in conjunction with a copy of the Act and its amendments.

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While every precaution has been taken in the preparation of this bulletin, the clerk is strongly advised to refer directly to the Act to ensure accuracy and completeness.



## GENERAL

This most recent group of amendments affect a number of administrative improvements to the conduct of municipal elections.

Some of the principle features of the legislation are the following:

- A. The period of time allotted for the revision of the preliminary list has been set back two days.
- B. The period for receiving nomination papers has been reduced.
- C. The proceedings to be taken by a D.R.O. when names are added to the polling list under section 33, 51 or 56 of the Act are simplified.
- D. The procedure on an application for a recount or final addition is revised to provide an opportunity for candidates affected thereby to be heard by the judge before he determines whether the application is to be granted.
- E. The status of a candidate declared elected when proceedings are then launched for a recount or final addition is clarified.

Let us take a look at each of the amendments of The Municipal Elections Act, 1977.

### 1. Change Reference to Minister - Section 1(18)

This is strictly a housekeeping change that changes the reference from Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs to Minister of Intergovernmental Affairs. This corresponds to the realignment of provincial ministerial responsibilities.



## 2. Oaths - Section 5(2)

This section has been amended to add assistant returning officers as persons authorized to administer oaths for the purposes of this Act. This amendment is primarily of benefit to those municipalities that employ large election staffs where assistants are delegated certain responsibilities by the returning officer and the ability to take oaths will improve the process instead of having to wait until the clerk is available.

## 3. Qualification Period - Sections 12 & 13

Previously the qualification period for electors ended on the Friday in October that precedes polling day by seventeen days. It has now been revised to provide that the period of qualification now ends on the Wednesday in October that precedes polling day by nineteen days. This change is made so that the end of the qualification period will coincide with the end of the period for revisions to the preliminary list of electors.

## 4. Disqualifications - Section 14

Previously section 55(2) of the Act stated:

"A person who on polling day is a prisoner in a penal or reform institution, or a patient of a mental hospital, or who has been transferred from a mental hospital to a home for special care as mentally incompetent is disqualified from voting at any election and no ballot shall be furnished to such a person."

There is no practical means, at the moment, for a deputy returning officer to identify these individuals and carry out his responsibilities.

This responsibility has now been removed from the deputy returning officer and the disqualification implicit in the old section included in the revised section 14.

The responsibility now rests with the Ministry of Revenue to ensure that during the enumeration these individuals are not included on the list of electors. Responsibility also rests with the individuals, who could be prosecuted if they were to vote when disqualified.

5. Commencement Date for Revisions to Preliminary List of Electors - Section 24(b) & 25(3)

There may have been some misunderstanding regarding the last date upon which revisions to the preliminary list of electors were to commence under the previous legislation. Clause (b) of section 24 and subsection 2 of section 25 have been changed and clarified to indicate that revisions to the list will begin at least seven days before the last day for filing applications for revisions.

6. Last Day for Filing Application for Revisions to the Preliminary List of Electors - Section 25(3)

This section has been amended to provide that the last day for filing application for revisions to the preliminary list of electors is now the nineteenth day before polling day instead of the seventeenth. This change is in response to a request to provide additional working days to conduct the hearings required as a result of applications for changes to and deletions from the preliminary list, and to facilitate the finalization of the list of electors required for the mandatory advance poll the next week.

7. Distribution of Preliminary Lists - Section 25(5)b

This section has been amended to provide that copies of the preliminary lists be sent to every member of every local board, the members of which are required to be elected at an election to be conducted by the clerk. This is in addition to the other persons already entitled to a copy of the preliminary list.



8. Deletion from List of Electors - Section 27(1)

The revised section is set out below showing, underlined, the words that have been added.

27(1) A person whose name has not been included in the preliminary list for a polling subdivision in a municipality or whose name has been included therein but the information relating to him set out therein is incorrect or whose name has been included therein as a non-resident and who is qualified to be an elector in more than one ward in the municipality may apply to the clerk or assistant revising officer of the municipality on or before the last day for filing applications for revision of the list to have his name included on the list or have such information corrected, including having his name deleted from any list where it is incorrectly included, or to have his name deleted from the list and to have it entered in the list of another ward in which he or his spouse is the owner or tenant of land.

Previously the Act permitted the clerk to enter the name of an elector on the preliminary list of electors for a polling subdivision or alter incorrect information pertaining to an elector entered on the list for a polling subdivision.

The Act did not specifically permit the clerk to delete the name of a resident elector on the list in one polling subdivision for a ward and re-enter it in another. Thus a resident elector who has moved from one ward to another during the period of qualification may apply to have his name entered on the preliminary list for a polling subdivision in his new ward, but the clerk was not authorized to make the corresponding deletion from the preliminary list for the polling subdivision from which the elector has moved.

The amended section now gives this authority to the revising officer.

9. Notices of Deletions from Preliminary List of Electors - Section 28(7)

This amendment is intended to provide the clerk some discretion in sending notices to people who have been deleted from the preliminary list. An example would be the situation where a deceased person's name has been deleted from the list. Previously, the clerk was required to send a notice of the deletion. This may have caused undue discomfort for others. The amendment permits the clerk to use discretion in sending notices of deletion if he is satisfied that the person cannot be found at the address in the preliminary list, or that notice cannot be delivered to the person.

10. Statement of Changes - Section 30

This amendment, while retaining the requirement that all candidates be supplied with a copy of the revisions to the preliminary list of electors, deletes the word "send" and permits the clerk discretion in how they will be provided. For example, a candidate may pick up his copies.

11. Assessment Commissioner's Copies of Certificates - Sections 33(4), 56(3)

Sections 33(4) and 56(3) have been repealed. The returning officers are no longer required to forward copies of the certificates issued under section 33 or the declarations under section 56 to the assessment commissioner.

12. Voting by Certificate - Poll Book Notation - Sections 33(5), 51(2), 56(2)

Where a person receives a certificate of entitlement to be entered on the list of electors (section 33) or a certificate to vote where stationed (section 51), a copy of each remains with the clerk and another must be presented at the poll to be placed in the ballot box. Declarations of entitlement to vote which have been taken at the poll (section 56) are delivered to the clerk after the election.



No purpose is served by requiring a notation on the poll clerk's list that an elector "voted under certificate" as was previously required under sections 33 and 51. The clerk is in possession of copies of these certificates and copies are in the ballot box, if an elector's entitlement to vote should be questioned. This amendment deletes the requirement that the poll clerk note on the polling list maintained by him the notation "voted by certificate". As well, the requirement under section 56 to add the name of an elector to the polling list of the D.R.O. and the polling list of the poll clerk has been amended. The name of an elector voting under section 56 need be added only to the list maintained by the poll clerk.

13. Nomination Period - Section 35(2)

This is a significant change in that the amendment reduces the period during which nominations may be filed with the clerk.

Nominations may now be filed between 9 a.m. and 5 p.m. on nomination day and during the clerks' regular office hours on the four days preceding nomination day. For the majority of clerks this means the Thursday and Friday preceding nomination day as most clerks do not have normal office hours on the weekend.

This change also coincides with the requirements regarding the posting of the preliminary list of electors. Now the preliminary list will be posted not later than the day prior to the first day on which nominations may be received.

14. Filing Nomination Papers by Agent - Section 36(1)

Section 36(1) now provides a person to file a nomination paper through his agent instead of being required to submit it personally.

15. Nominators - Section 36(1)

This section has been changed to remove the requirement that a nominator not on the preliminary list of electors file an affidavit that he is otherwise entitled to vote.

Now such a nominator must only have made application to have his name added to the list of electors.

16. Inspection of Nomination Papers - Section 36(6)

This section has been clarified to indicate that a nomination paper, after it is certified, may be inspected by any person during normal business hours although it must remain in the possession of the clerk.

17. Supplementary Nominations - Section 37(5)

This section has been changed to provide that a person nominated on the supplementary nomination day has until 5:00 in the afternoon of the day following to withdraw in the same fashion as provided for persons nominated on the regular nomination.

18. Death of a Candidate for Head of Council - Section 38(2)

This is a new section governing the situation where a candidate for head of council dies. If a person nominated to run for head of council dies before 5:00 p.m. on nomination day, then additional nominations will be received on the Wednesday following nomination day under the provisions of section 37.

If the death of such person occurs after 5:00 p.m. on nomination day, a new election must be held.

Under previous legislation, a new election would be held only if the death of a candidate would result in an acclamation.



19. Insufficient Number of Candidates -  
Section 40(3)

This section now provides that where all seats open are not filled at an election, a new election to fill the vacancies is only required where a quorum is not elected. If a quorum is elected the vacancy may, if council wishes, be filled in accordance with section 44 of The Municipal Act.

20. Ballots - Section 43(8a)

A new requirement has been added for metropolitan, regional or district municipalities and the County of Oxford that a ballot shall contain information showing the name of the office for which the election is being held and the name of any office on any other council which will be held as a result of the election to such office such as local councillor and regional councillor.

21. Notice of Location of Polling Place -  
Section 46(8)

In municipalities with more than 5,000 electors, the clerk was required to send each elector a notice of the polling place. This would result in several notices going to one household. A council may now pass a by-law before September 1st which would allow, in the case of resident electors, for one notice addressed to all electors at that address.

22. Certificate to Vote Where Stationed -  
Section 50

The provisions relating to the issuing of a certificate to vote where stationed has been simplified and a new form introduced. The result is the elimination of the requirement that the clerk keep a list of all such certificates and the need to ensure that the names are deleted from the polling lists where the election worker could normally be required to vote.

23. Attendance During Counting of Ballots -  
Section 66(8)

This section has been revised to clearly state that the candidate or his scrutineer, but not both, may be present at the counting of the votes.

24. Delivery of the Ballot Box - Section 78(6)

Previously the D.R.O. was required to return the ballot box directly to the clerk. This section now provides that the clerk may, in writing, designate that the box is to be delivered elsewhere as in the case of emergency provisions.

25. Documents in Ballot Boxes - Section 80(2)

The new provision permits a ballot box to be opened by the clerk to place documents in it which were inadvertently left out. The old provisions, concerning removal of documents placed in the box in error, remain.

26. Notice of Recount - Section 83(2)

Now a candidate who has filed an affidavit with the judge in support of a request for a recount must also provide a copy of the affidavit to the clerk and any other candidate affected. This will permit the clerk or any candidate affected by the application to examine the allegations and if deemed necessary, submit his own affidavit in order to place all the facts possible before the judge before a recount is ordered.



27. Candidate Status Where Recount Involved -  
Section 83(12, 13)

These new subsections are intended to clarify the position of a candidate who has been declared elected and who is subsequently involved in a recount. It is now clear that such a candidate is entitled to sit on council pending the results of the recount, but where the recount determines that some other person was elected, such person is then entitled to take the seat, even though the person originally declared elected appeals the recount results.

Also, the new subsections provide that any decision of council or a local board reached with the participation of a member who is subsequently declared not entitled to sit are valid.





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